



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 150817720-5999-02]

RIN 0648-BF21

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Greater Amberjack Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule revises the commercial and recreational annual catch limits (ACLs) and annual catch targets (ACTs), the commercial trip limit, and the recreational minimum size limit for greater amberjack in the Gulf of Mexico (Gulf) exclusive economic zone. Additionally, this rule corrects an error in the Gulf gray triggerfish recreational accountability measures (AMs). The purpose of this rule is to modify Gulf greater amberjack management measures to end overfishing and

achieve optimal yield for the greater amberjack resource.

DATES: This rule is effective [*insert date 30 days after date of publication in the* **FEDERAL REGISTER**].

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office Web Site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2015/greater_amberjack_framework/index.html.

FOR FURTHER INFORMATION CONTACT: Richard Malinowski, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On September 17, 2015, NMFS published a proposed rule for the framework action and requested public comment (80 FR 55821). The proposed rule and the framework action outline the rationale for the actions contained in this final rule. A summary of the management measures described in the framework action and implemented by this

final rule is provided below.

Management Measures Contained in this Final Rule

This final rule revises the commercial and recreational ACLs and ACTs (which are expressed as quotas in the regulatory text), the commercial trip limit, and the recreational minimum size limit for greater amberjack in the Gulf.

Commercial and Recreational ACLs and ACTs

This final rule revises the commercial and recreational ACLs and ACTs for Gulf greater amberjack. All ACL and ACT weights are described in pounds (lb) round weight. The current sector allocation for the greater amberjack stock ACL of 27 percent for the commercial sector and 73 percent for the recreational sector does not change through this framework action. The commercial ACL is set at 464,400 lb (210,648 kg) and the commercial ACT is set at 394,740 lb (179,051 kg). The recreational ACL is set at 1,255,600 lb (569,531 kg) and the recreational ACT is set at 1,092,372 lb (495,492 kg).

Commercial Trip Limit

This final rule revises the commercial trip limit to 1,500 lb (680 kg), gutted weight; 1,560 lb (708 kg), round weight. The Council determined that this trip limit would further reduce the likelihood of exceeding the commercial ACL and ACT and could extend the length

of the commercial fishing season.

Recreational Minimum Size Limit

This rule revises the greater amberjack recreational minimum size limit to 34 inches (86.4 cm), fork length. The Council determined that this increased recreational minimum size limit would provide an opportunity for a greater number of sexually mature greater amberjack to spawn, which could assist in Council efforts to end overfishing and rebuild the stock.

Other Actions Contained in the Framework Action

In addition to the measures being implemented in this rule, the framework action revises the greater amberjack acceptable biological catch (ABC) and overfishing limit (OFL). All ABC and OFL weights are described in pounds (lb) round weight. This framework action revises the ABC and OFL for 4 years, beginning in 2015. The ABC, which is equal to the stock ACL is set at 1,720,000 lb (780,179 kg). The OFL is set at 2,660,000 lb (1,206,556 kg) for 2015; 3,210,000 lb (1,456,032 kg) for 2016; 3,420,000 lb (1,551,286 kg) for 2017; and 3,510,000 lb (1,592,109 kg) for 2018, and subsequent years.

Additional Proposed Changes to Codified Text

In Amendment 37 to the FMP, an in-season AM was implemented for gray triggerfish (which is based on a single season of landings data), so the recreational sector closes when the recreational ACT is reached

or projected to be reached (78 FR 27084, May 9, 2013). However, during the implementation of Amendment 37, the last sentence in § 622.41(b)(2)(iii), which states that "Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP," was not removed. NMFS has only recently noticed this error. This rule corrects this error by removing this sentence. The recreational ACL and ACT for gray triggerfish implemented in Amendment 37 to the FMP remains unchanged.

Comments and Responses

NMFS received 12 comment submissions on the framework action and the proposed rule from individuals, the charter vessel and headboat industry, and non-governmental organizations. The comments that oppose one or more of the management measures in the framework action and the proposed rule are categorized into the comments summarized and responded to below.

Comment 1: The greater amberjack minimum size limit should not be revised, or if revised, should instead be set to 32 inches (81 cm), fork length. Further, enforcement of the current size limit should be increased because under-sized greater amberjack are already observed after fishing trips.

Response: NMFS disagrees. The 2014 greater amberjack stock assessment indicated that the stock continues to be overfished and

undergoing overfishing. The Council determined, and NMFS agrees, that increasing the minimum size limit from 30 inches (76 cm), fork length, to 34 inches (86 cm), fork length, will help end overfishing and rebuild the stock.

As described in the framework action, studies have found that at a size limit of 34 inches (86 cm), 85 percent of greater amberjack females reach sexually maturity. However, at the status quo size limit of 30 inches (76 cm) only 11 percent of females reach sexual maturity and at a size limit of 32 inches (81 cm), only 45 percent of females reach sexual maturity. A minimum size limit that is less than the revised 34 inch (86 cm) size limit would allow for a much greater number of greater amberjack to be retained that have not reached sexual maturity, which will lessen the effectiveness of measures being implemented to end overfishing of the stock.

With respect to enforcement, the NMFS Office of Law Enforcement (OLE) is committed to continuing to monitor reef fish harvest and increase awareness and compliance with regulations. Its Enforcement Officer Program is being expanded to better address compliance assistance and fisheries monitoring. Additionally, OLE Enforcement Officers work with state partners providing inspection services for enforcement of Federal regulations through the Joint Enforcement Agreement to better monitor landings.

Comment 2: Instead of increasing the greater amberjack recreational minimum size limit, the current June through July greater amberjack recreational closed season should be extended to include August and September each year. This change to the recreational closed season would work to end overfishing of greater amberjack better than a change to the size limit.

Response: NMFS disagrees. Extending the recreational closed season into the months of August and September would be expected to result in a longer opportunity to fish during the rest of the recreational fishing season. However, increasing the length of the recreational closed season would not provide greater benefit to the stock than increasing recreational minimum size limit. The increase of the recreational minimum size limit to 34 inches (86 cm) is expected to better allow a greater percentage (85 percent) of the sexually mature females to spawn, which will work towards reducing the risk of overfishing of the stock. The Council did consider revising the recreational closed season in this framework action but decided to retain the current closed season of June 1 through July 31.

Comment 3: Greater amberjack has failed to meet its rebuilding plan deadline and is currently without a rebuilding plan, despite its status as being overfished and undergoing overfishing. NMFS and the Council must formalize a rebuilding plan to comply with the

Magnuson-Stevens Act and give Gulf greater amberjack rebuilding the greatest likelihood of success.

Response: NMFS disagrees that greater amberjack is without a rebuilding plan. As explained in the proposed rule, a greater amberjack rebuilding plan was implemented in 2003 with a rebuilding target of 2012. In August 2014, pursuant to section 304(e) (2) of the Magnuson-Stevens Act, NMFS notified the Council of the 2014 stock assessment results that indicated that the greater amberjack stock continued to be overfished and undergoing overfishing. Following that notification, the Council was required under section 304(e) (3) of the Magnuson-Stevens Act to prepare a plan amendment or regulations within 2 years to end overfishing immediately and rebuild the greater amberjack stock.

Although the Council did not explicitly discuss its obligations under section 304(e) (3) of the Magnuson-Stevens Act, the framework action and this final rule fulfill the Council's responsibility to "prepare and implement a fishery management plan, plan amendment, or proposed regulations for the fishery" under that provision.

Consistent with the requirements of sections 304(e) (3) and (4) of the Magnuson-Stevens Act, the framework action and this final rule are projected to end overfishing immediately and rebuild the stock in as short a time as possible, taking into account the needs of fishing

communities. The specified time for rebuilding is 4 years, well below the maximum time of 10 years specified in section 304(4)(A)(ii) of the Magnuson-Stevens Act.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the conservation and management of Gulf greater amberjack and is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

In compliance with section 604 of the RFA, NMFS prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA follows.

No public comments specific to the initial regulatory flexibility analysis were received and, therefore, no public comments are addressed in this FRFA.

NMFS agrees that the Council's choice of preferred alternatives will best achieve the Council's objectives for the framework action while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities. The preamble to the final rule provides a statement of the need for and objectives of this rule.

NMFS expects this final rule to directly affect all commercial vessels that harvest Gulf greater amberjack under the FMP. Changes to recreational ACLs, ACTs, and minimum size limits in this final rule will not directly apply to or regulate charter vessel and headboat (for-hire) businesses. Any impact to the profitability or competitiveness of for-hire fishing businesses will be the result of changes in for-hire angler demand and will therefore be indirect in nature. The RFA does not consider recreational anglers, who will be directly affected by this final rule, to be small entities, so they are outside the scope of this analysis and only the effects on commercial vessels were analyzed.

As of March 25, 2015, there were 863 vessels with valid or renewable Gulf reef fish commercial vessel Federal permits. On average (2009 through 2013), 211 vessels commercially landed greater amberjack each year from Gulf Federal waters. Their average annual vessel-level revenue for 2009 through 2013 was approximately \$130,000

(2013 dollars), of which \$2,400 was from greater amberjack.

No other small entities that will be directly affected by this final rule have been identified.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S., including commercial finfish harvesters (NAICS code 114111). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million for all its affiliated operations worldwide. All of the vessels directly regulated by this rule are believed to be small entities based on the SBA size criteria.

Because all entities expected to be affected by this final rule are small entities, NMFS has determined that this final rule will affect a substantial number of small entities. Moreover, the issue of disproportionate effects on small versus large entities does not arise in the present case.

This final rule reduces the greater amberjack commercial ACT by 3.5 percent or 14,260 lb (6,468 kg), round weight, from 409,000 lb (185,519 kg) to 394,740 lb (179,051 kg), round weight. Additionally, this final rule reduces the greater amberjack commercial trip limit from 2,000 lb (907 kg), round weight, to 1,560 lb (708 kg), round

weight; 1,500 lb (680 kg), gutted weight. On its own, the reduction in the commercial ACT would be expected to result in a shorter fishing season and fewer commercial trips that harvest greater amberjack. Conversely, the reduced commercial trip limit would be expected to increase the commercial fishing season length and the overall number of trips necessary to harvest the entire commercial ACT. When the actions to reduce the commercial ACT and trip limit are analyzed together, the expected recurring annual reduction in total ex-vessel revenue from this final rule is estimated to be \$20,703 (2013 dollars), assuming there is no substitution of other species and no change in effort, harvest rates, or prices. In addition, the commercial season length is predicted to be 5 days longer under the preferred commercial ACT and trip limit alternatives than under the no action alternatives for these actions. Assuming the reduction in greater amberjack revenues is distributed evenly across the average number of vessels that commercially harvest greater amberjack per year (211 vessels), the annual per-vessel loss is estimated to be \$98 (2013 dollars), or less than 1 percent of the average annual revenue earned by these vessels for all species harvested. Because this estimate is based on average performance, some vessels may be affected differently than others, depending on their overall catch composition, landing capacity, and fishing behavior.

Thirty vessels, on average per year (2009 through 2013), were identified that commercially landed greater amberjack in excess of the selected 1,500 lb (680 kg), gutted weight, trip limit on a single trip (14 percent of the average number of vessels that harvested greater amberjack each year). In 2013, the total weight of greater amberjack harvested in excess of 1,500 lb (680 kg), gutted weight, per trip, accounted for approximately 10 percent of total greater amberjack landings. Thus, for the 211 vessels that commercially harvest greater amberjack, the reduction in the commercial trip limit, assuming effort remains constant, is expected to reduce total commercial greater amberjack harvests by approximately 39,000 lb (17,690 kg), round weight, and \$46,800 (2013 dollars) in total ex-vessel revenue annually. Averaged across the 30 vessels per year with trip harvests above 1,500 lb (680 kg), gutted weight, this reduction equals approximately \$1,560 (2013 dollars) per vessel, or approximately 1 percent of their average annual revenue. These losses would be reduced if increased landings of other species can be substituted for greater amberjack landings or if new trips harvesting greater amberjack were to occur. It is assumed that the entire commercial ACT will be harvested under the preferred trip limit alternative. Therefore, if the trip limit change implemented by this final rule results in a decrease in greater amberjack landings and

revenues for some vessels, it will result in an increase in greater amberjack landings and revenues for other vessels.

The following discussion analyzes the alternatives that were not selected as preferred by the Council. Only the actions which contain alternatives that will have direct economic effects on small entities are included in the following discussion.

Four alternatives were considered for the action to modify the commercial and recreational ACLs and ACTs for Gulf greater amberjack. The first alternative, the no action alternative, would not be expected to have any direct economic effects. This alternative was not selected because the stock ACL would exceed the ABC calculated by the most recent greater amberjack assessment and recommended by the Council's Scientific and Statistical Committee (SSC) and would, therefore, be inconsistent with the Magnuson-Stevens Act National Standard 1 guidelines. The second alternative would set the stock ACL from 2015 through 2018 equal to the ABC values recommended by the Council's SSC. This alternative included two sub-options. The first sub-option would use the Council's ACL/ACT control rule as established in the Generic ACL/AM Amendment (76 FR 82044, December 29, 2011), which would set the commercial ACT at a level reduced by 15 percent from the commercial ACL for greater amberjack and set the recreational ACT at a level reduced by 13 percent from the recreational ACL. The second

sub-option would not use the ACL/ACT control rule and would instead apply a 20-percent buffer that would reduce both the recreational and commercial ACLs by 20 percent to establish the recreational and commercial ACTs. This alternative would increase the stock ACL each year from 2015 through 2018, which would be expected to result in greater economic benefits than the preferred alternative in the framework action. However, this alternative was not selected as preferred by the Council because the 2014 stock assessment results indicated that the greater amberjack stock continued to be overfished and undergoing overfishing and the Council determined that maintaining the catch limit at the more conservative 2015 level was appropriate. The third alternative, the preferred alternative, sets a constant stock ACL equal to the 2015 ABC value recommended by the Council's SSC. The same two sub-options for setting the ACT that were considered for the second alternative were also considered for the third alternative. The first sub-option, selected as preferred by the Council, applies a 15-percent buffer to the commercial ACL to set the commercial ACT and applies a 13-percent buffer to the recreational ACL to set the recreational ACT. The second sub-option would not use the ACL/ACT control rule and instead would apply a 20-percent buffer that would reduce both the recreational and commercial ACLs by 20 percent to establish the recreational and commercial ACTs. The fourth

alternative would set the stock ACL and stock ACT at zero. The fourth alternative would stop all directed harvest of greater amberjack by both sectors and would be expected to result in greater economic losses than the Council's preferred ACL/ACT alternative.

Five alternatives were considered for the action to modify the greater amberjack commercial trip limit. The first alternative, the no action alternative, would maintain the current 2,000 lb (907 kg), round weight, trip limit and would not be expected to have any direct economic effects. The third, fourth, and fifth alternatives would have established 1,000 lb (454 kg), 750 lb (340 kg), and 500 lb (227 kg), gutted weight trip limits, respectively. Although these three alternatives would be expected to extend the commercial fishing season, they would increase the likelihood that trips are no longer profitable and decrease the likelihood that the entire commercial ACT would be harvested during the fishing year. Therefore, these three alternatives would be expected to result in greater economic losses to affected small entities than the preferred trip limit alternative.

An item contained in this final rule that is not part of the framework action is the removal of the last sentence in § 622.41(b)(2)(iii), "Recreational landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP." This sentence, which pertains to the evaluation

of recreational landings of gray triggerfish relative to the ACL, was inadvertently not removed in the final rule implementing Amendment 37 to the FMP (78 FR 27084, May 9, 2013). The removal of this sentence will clarify the criteria used to trigger recreational AMs as written in the Federal regulations; however, it is not expected to have any effect on current management practices. This is because NMFS has managed gray triggerfish in accordance with the preferred alternatives specified in Amendment 37 since its implementation. Therefore, this is an administrative change only and is not expected to have any direct economic effects on small entities. As such, this component of the final rule is outside the scope of the RFA.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as 'small entity compliance guides.' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Greater amberjack, Gulf,
Recreational, Reef fish.

Dated: November 25, 2015.

Eileen Sobeck,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended
as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH
ATLANTIC**

1. The authority citation for part 622 continues to read as
follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.37, revise paragraph (c)(4) to read as follows:

§ 622.37 Size limits.

* * * * *

(c) * * *

(4) *Greater amberjack*--34 inches (86.4 cm), fork length, for a

fish taken by a person subject to the bag limit specified in § 622.38(b) (1) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

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3. In § 622.39, revise paragraphs (a) (1) (v) and (a) (2) (ii) to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(v) Greater amberjack--394,740 lb (179,051 kg), round weight.

* * * * *

(2) * * *

(ii) *Recreational quota for greater amberjack.* The recreational quota for greater amberjack is 1,092,372 lb (495,492 kg), round weight.

* * * * *

4. In § 622.41, revise paragraphs (a) (1) (iii), (a) (2) (iii), and (b) (2) (iii) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) * * *

(1) * * *

(iii) The commercial ACL for greater amberjack is 464,400 lb (210,648 kg), round weight.

(2) * * *

(iii) The recreational ACL for greater amberjack is 1,255,600 lb (569,531 kg), round weight.

(b) * * *

(2) * * *

(iii) The recreational ACL for gray triggerfish is 241,200 lb (109,406 kg), round weight. The recreational ACT for gray triggerfish is 217,100 lb (98,475 kg), round weight.

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5. In § 622.43, revise paragraph (a) to read as follows:

§ 622.43 Commercial trip limits.

* * * * *

(a) *Gulf greater amberjack*. Until the quota specified in § 622.39(a)(1)(v) is reached, 1,500 lb (680 kg), gutted weight; 1,560 lb (708 kg), round weight. See § 622.39(b) for the limitations regarding greater amberjack after the quota is reached.

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